SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action File No. 50-C-1017

SWIFT & COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.,

Defendants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, Swift & Company, plaintiff-appellant, submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause.

Opinion Below

The District Court wrote no opinion. A copy of its findings of fact, conclusions of law, and final order dismissing the complaint are attached hereto as Exhibit A.

Jurisdiction

(a) This is an action, brought pursuant to 28 U. S. C. (1948 revision) 1336, 1398, 2284, and 2321-2325, to enjoin,

set aside, and annul a report and order of the Interstate Commerce Commission.

(b) The final order of the three-judge district court dismissing the complaint was entered on June 21, 1951. A petition for appeal was presented herewith and allowed on July 26, 1951.

(c) The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U. S. C. (1948 revision) 1253 and 2101(b).

(d) The following decisions, among many others, sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Swift & Co.* v. *United States*, 316 U. S. 216; *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169; *United States* v. *U. S. Smelting, R. & M. Co.*, 329 U. S. 186; *Henderson* v. *United States*, 339 U. S. 816; *United States* v. *Rock Island Co.*, 340 U. S. 419; *United States* v. *Champlin Refining Co.*, 341 U. S. 290.

Questions Presented

All the points raised in the Assignment of Errors are presented by this appeal, but the major issues may be formulated as follows:

1. Whether the Interstate Commerce Commission may lawfully deny service at the line-haul rate to a single shipper at its own sidetrack in respect of a single commodity, on the ground of asserted interference with and disruption of terminal transportation operations, and still permit the identical service at a high additional charge.

2. Whether the Interstate Commerce Commission may lawfully sanction a high additional charge for switching service in respect of a single commodity to a particular sidetrack, which service it asserts would lead to interference with and disruption of terminal transportation operations, where it refrains from prohibiting such switching service

altogether, where it cancels as "not just and reasonable" a proposal by a carrier to exempt that particular commodity from transportation altogether, and where it permits the identical service by the same carrier without such additional switching charge in respect of the same commodity consigned to a stockyards on the same line of railroad, a few city blocks distant from the same sidetrack.

3. Whether the Interstate Commerce Commission had legal power to enforce a covenant between a railroad and a stockyards, the effect of which, in terms and as herein applied, was to require the railroad to deny normal transportation service to a shipper at its sidetrack of one commodity only except at a high additional charge, in consequence of which the shipper would become obliged either to accept and pay for nontransportation service from the stockyards which it neither desired nor requested but without which it could not obtain the shipments which it owned, or else become obliged to incur additional substantial expense to obtain the shipments by truck.

4. Whether the Interstate Commerce Commission properly treated the Chicago Junction Railway as an independent carrier when that carrier had been leased by The New York Central Railroad Company, in the face of Section 1(3)(a) of the Interstate Commerce Act which defines a "railroad" as "all the road in use by any common carrier operating a railroad, whether operated under a contract, agreement, or lease."

5. Whether inadequate motive power on the part of a leased carrier can justify discrimination against a single shipper in respect of a single commodity on the grounds of asserted congestion in terminal operations, where that carrier's motive power had been decreased by 45 per cent. in the preceding twenty-five years.

6. Whether congestion at a terminal justifies factual

discrimination against a single shipper in respect of a single commodity at a particular sidetrack, which discrimination would otherwise be prohibited by the plain language of Sections 1(4), 1(5), 1(9), 2, 3(1), and 15(5) of the Interstate Commerce Act.

7. Whether an extra switching charge for delivering a particular commodity at a particular shipper's sidetrack can be justified on the ground of the increased congestion of terminal facilities which such deliveries would involve, where such extra switching charge is not demanded for other commodities to the same sidetrack or to any commodities at other sidetracks in the same terminal area, nor for the same commodity delivered to a stockyards a few city blocks beyond the same sidetrack.

8. Whether an extra switching charge for delivering a particular commodity at a particular shipper's sidetrack can be justified on the ground that, if such deliveries are permitted without such extra switching charge, other shippers of the same commodity might thereafter make demand for similar service to their sidetracks.

Statutes Involved

This appeal involves the interpretation of numerous sections of the Interstate Commerce Act, as amended (49 U. S. C. 1 *et seq.*), particularly Sections 1(4), 1(5), 1(9), 1(10), 1(11), 2, 3(1), and 15(5).

Statement

This controversy arises out of the attempt of Swift & Company, plaintiff-appellant, to receive its own livestock at its own sidetrack in Chicago at the normal line-haul rates prescribed by the Interstate Commerce Commission for that commodity.

As a result of the order of the Interstate Commerce

Commission here in question, which the District Court refused to set aside, Swift at Chicago now can receive its own livestock, averaging 6489 carloads of livestock per year—"direct" shipments purchased by Swift for which no stockyards services are necessary, since Swift is prepared to receive them at its own plant—in one of three ways:

(1) It can—and does—receive these shipments at its own unloading pens at 2320 South Halsted Street, on a sidetrack connected with the Chicago, Burlington & Quincy Ry. Co., at flat Chicago line-haul rates, without the addition of switching or terminal charges, regardless of the identity of the line-haul carrier bringing the shipment to Chicago. But receipt at this location requires further transportation of the livestock, by motor vehicles, to Swift's meat packing plant, and such additional transportation costs Swift about $50,000 a year (as of the time of the hearing).

(2) Swift could consign its direct shipments to itself at the Union Stock Yards in Chicago, but consignment to that point involves the payment of yardage charges for non-transportation services, simply to march the stock through the Stock Yards into its own plant, i. e., for permission to recover its own animals from the stockyard pens. These charges range from $16.25 per car on cattle to $18.75 per car on a single-deck carload of sheep, and aggregate, for the shipments here involved, about $129,000 a year.

(3) Swift could consign its direct shipments to itself at its own sidetrack in the packinghouse area in Chicago. This method involves the payment of an extra switching charge of $28.80 per car as of the time of the hearing, since increased to $36.00 per car, in excess of what Swift now pays for precisely the same delivery of all other classes of freight to the same or adjacent sidetracks. At the present

rate, this comes to $233,604 a year for Swift's average annual shipments of livestock.

The present proceeding was begun by Swift before the Commission to secure an order which would require delivery by the twenty-odd railroad defendants—line-haul carriers serving Chicago—of Swift's direct shipments of livestock to Swift's sidetrack, which was connected with the rails of the Chicago Junction Railway, at the same line-haul rates and charges under which the railroad defendants deliver livestock to the unloading pens of the Union Stock Yards upon the rails of the Chicago Junction Railway, a few city blocks beyond Swift's sidetrack, and at the same line-haul rates and charges applicable to the delivery of all line-haul freight other than livestock to the same Swift sidetrack.

The proof before the Commission established the following undisputed facts:

The defendant Union Stock Yard & Transit Co. of Chicago (hereinafter called the Union Stock Yards), or a company holding its stock, is the owner in fee of the property of the Chicago Junction Railway. The latter carrier is, pursuant to the Commission's approval thereof in 1922, leased to and operated by the defendant New York Central. See *Chicago Junction Case*, 71 I. C. C. 631. The New York Central in its lease undertook to perform a covenant contained in the earlier lease from the Union Stock Yards to the Chicago Junction Railway, by which the latter agreed "to conduct, manage and operate the line of railroad by this instrument demised, and insofar as possible, the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the yards." This covenant is still recognized as being in force, and was the basis for the Union Stock Yards' demand that the New York Central defend the proceeding before the

Commission, which the Central would not otherwise have done (Ex. 57; see 274 I. C. C. at 577).

At present, the line-haul rates to Chicago are treated by the carriers as including delivery of all line-haul carload traffic (except livestock) upon the many industrial sidetracks connected with the Junction rails and served only by Junction motive power. This is effected by an arrangement by which the Junction receives a division of the line-haul rate. The balance of that rate is retained by the line-haul carrier which transports the car from its point of origin to Chicago and thence to its connection with the Junction track. Interstate shipments of livestock consigned to the stockyards are delivered by the line-haul carriers to the unloading chutes of the Union Stock Yards, also reached only by the Junction rails, without the addition of any switching charge in addition to the line-haul rates. In this proceeding, Swift sought an order which would similarly make the line-haul livestock rates to Chicago apply to shipments of its own "direct" livestock delivered to its own sidetrack which is similarly connected only to the Junction rails.

The relative location of the Junction yards, the Union Stock Yards, and Swift's private sidetrack is shown on a map, derived from exhibits before the Commission, which is marked Exhibit B, and is attached hereto and made a part of this Statement.

In making deliveries of interstate livestock to the pens of the Union Stock Yards, the loaded cars consigned to those yards follow precisely the same rail movement, from the several line-haul carriers' break-up yards in the Chicago area to the eastern limits of the Junction's Ashland Avenue yards, for precisely the same distance, as would be followed by Swift's shipments to its private sidetrack. Beyond this point, as the map, Exhibit B, shows, the dis-

tance to Swift's sidetrack on the Junction is somewhat less than to the Stock Yards' unloading pens, so that the total distance over which the livestock would be transported to Swift's sidetrack would normally be slightly less than to the Stock Yards' pens. But for this slightly shorter journey, Swift must under the Commission's ruling pay an extra switching fee of $36 per car over and above the amount paid by a consignee at the Stock Yards.

The line-haul carriers and the Junction move loaded freight cars from the outer break-up yards to the industries on the Junction tracks in three ways:

(i) Switching movement of livestock cars only, destined to the Stock Yards;

(ii) Switching movement of dead freight only, consigned to industry tracks on the Junction;

(iii) Combined "trains"—and a "train" means any movement of an engine with one or more cars attached—consisting of livestock for the Union Stock Yards and dead freight for industry sidetracks on the Junction. In this instance, the dead freight is set out at the Junction's Ashland Avenue yards by the line-haul switching engine, which then proceeds with the livestock cars to the Stock Yards, while the dead freight is switched by Junction motive power to the proper industry sidetracks on its line. This latter movement, by the switching engines of both the Junction and the line-haul carriers, is precisely the same movement as would be given a carload of livestock consigned to Swift's sidetrack.

If the prayer of Swift's complaint before the Commission had been granted, switching engines would proceed to the eastern end of the Junction's Ashland Avenue yards, as at present, with cuts of cars containing (a) dead freight for Junction sidetracks, (b) livestock for the Swift sidetrack, and (c) livestock for the Union Stock Yards. At the eastern end of the Ashland Avenue yards, the dead freight

and the livestock for the Swift sidetrack would be pushed onto one of the Junction receiving tracks and left there for subsequent delivery by Junction motive power, while the line-haul switching engine would proceed immediately to the Stock Yards with the livestock consigned there. As to cuts of cars containing only livestock for the Stock Yards, there would be no change in the present practice; viz., direct delivery by line-haul switching engines. Swift livestock would, of course, have to await delivery to its sidetrack, which would be later in time than livestock delivery to the Stock Yards; but Swift does not object to such later delivery.

The Commission dismissed the complaint in a report appearing at 274 I. C. C. 557. It treated the Junction as an independent railroad, pointed out that that carrier's motive power—which had decreased during the period of its lease by the New York Central by 45 per cent. (Ex. 58)—was presently being operated to capacity—and, on the assumption that other packers would likewise desire the same relief sought by Swift, concluded that (274 I. C. C. at 568) "any attempt by the Junction to make deliveries of livestock generally to packers or to transport an amount of livestock substantially greater than complainant's present needs, would result in serious disruption of operations and services and serious delays in the delivery of livestock." On that footing it dismissed the complaint—which had been based on Swift's present needs.

Commissioner Alldredge dissented (274 I. C. C. at 576-583) on several grounds: He was of opinion that the enforcement of the covenant between the Stock Yards and the Junction, which had been assumed by the New York Central, was condemned by *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169; that it was the obligation of the Junction's lessor to operate Swift's sidetrack without discrimination by reason of the command of Section 1(9);

"that the singling out of livestock as the exclusive type of freight which will not be accorded the switching service without extra charge is not only unjust and unreasonable, under sections 1(4) and 1(5)(a) of the act, but unduly and unreasonably prejudicial under section 3(1)"; and that if, by reason of the service sought, an increased congestion of yard operations and facilities would result, then, in accordance with familiar principles, the additional cost should be distributed over all traffic flowing through the yards and not be charged in its entirety to a single commodity consigned to a single shipper.

At the same time, the Commission required cancellation of schedules filed by the Junction—which had been protested by Swift and others, and suspended pending decision—whereby the Junction proposed to exempt livestock from the traffic which it would transport, and proposed further to cancel the application on livestock of all switching charges thereon, except to the Union Stock Yards. This proposal the Commission found to be "not just and reasonable" (274 I. C. C. 576).

The latter aspect of the case—Investigation and Suspension Docket No. 5543—has not been questioned. But Swift brought the present action to enjoin, set aside, and annul the report and order of the Commission in the main proceeding, Docket No. 29809.

The line-haul carriers, defendants in the Commission proceeding, as well as certain of the intervenors before the Commission, intervened in the action.

The three-judge district court made findings of fact—which, after enumerating the parties and their contentions and interests, simply set forth the findings of the Commission—and also made conclusions of law, which are generalized and do not enunciate any principles peculiar to the Interstate Commerce Act.

The court thereupon dismissed the complaint—but it wrote no opinion setting forth the reasons why it did so.

The Questions Are Substantial

The effect of the ruling below is that for the delivery of its own livestock to its own sidetrack on its own property, Swift must pay $36 per car in excess of what is paid for precisely the same delivery of all other classes of freight to the same or adjacent sidetracks, and similarly in excess of what is paid for all other livestock delivered to the unloading pens of the Union Stock Yards, distant a few city blocks, after following exactly the same movements through the Chicago outer terminals as would be used in delivery of cars of livestock to Swift's sidetrack. Such a ruling, obviously, sanctions precisely the kind of discriminatory practices which congressional legislation over a period of more than sixty years has sought to extirpate root and branch. *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, 175, and cases there cited.

Appellant contends, and proposes to argue, that the result below rests, not on administrative judgment or on technical expertise, but on a disregard of statutory provisions and legal rules which, but for the proceedings below, would have been considered as established without question.

1. The Commission said (274 I. C. C. at 568) that "the conclusion is warranted that a substantial movement of livestock by the Junction would adversely affect efficient and expeditious terminal operations generally and that operations would be disrupted if much of the large movement of livestock to the stockyards area and the return movement of the empty cars, were performed by the Junction." Terminal operations might be regarded as a subject peculiarly within the competence of the Commission, so that a court would perhaps hesitate before enjoining a Commission order which prohibited livestock movements

into a particular area generally, even though the traffic which is thought to disrupt terminal operations in this instance comes to only 20 carloads a day. But the Commission did not order any such prohibition; indeed, it specifically categorized as "not just and reasonable" the Junction's proposal to exempt livestock (other than that consigned to the Union Stock Yards) from the traffic which that carrier would transport. Moreover, the Commission justified a switching charge of $36 a car for this "disruptive" traffic, with the result that Swift is in a position, in case it desires to spend $233,604 a year, for the purpose, "seriously [to] interfere with, delay and disrupt terminal transportation operations and the movement of livestock generally"—and under the rulings below, such a course would be perfectly lawful. Such a conclusion, plainly, makes neither good sense nor good law. If what Swift sought was against the public interest, it should not be permitted at any price.

2. The truth of the matter is, of course, that the pecuniary interest of the Union Stock Yards in the Junction, protected by a covenant which the rulings below have enforced, has here been permitted to deprive Swift of a service to which it would otherwise be entitled. The present record demonstrates that the Junction has been managed and operated—with the sanction of the Commission and of the district court—so as to assure a direct and uninterrupted movement of livestock to and from the Union Stock Yards under trackage contracts, while at the same time it has exacted a high additional switching charge for the transportation of livestock to any consignee not using the services of the Stock Yards. Such a course of conduct comports squarely with the covenant in question to "conduct, manage, and operate the line of railroad [the Junction], and insofar as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the busi-

ness and affairs of the yard." But such a course of conduct is clearly inconsistent with the responsibility of a common carrier to serve all patrons indiscriminately within the limits of its capacity. And the enforcement of this covenant by the Commission and the district court runs afoul of the hitherto well-settled rule that prejudicial discriminations may not be frustrated by private contracts, regardless of the date of their execution. *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169; *Philadelphia, B. & W. Co.* v. *Schubert*, 224 U. S. 603; *Louisville & N. R. Co.* v. *Mottley*, 219 U. S. 467.

3. Throughout its report, which now stands approved by the district court, the Commission treats the Junction as an independent carrier, and predicates the underlying assumption of congestion and disruption of terminal facilities, thought to follow from the granting of Swift's prayer for relief, on the inadequacy of Junction's present motive power. This approach to the case at bar involves two demonstrable errors of law.

First, by treating the Junction as an independent carrier, the Commission flies in the face of Section 1(3)(a) of the Act, which defines "railroad" as "all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease." Consequently, as a matter of law, the Junction must be treated as a part of the New York Central. It may not be inappropriate to recall that the Supreme Court recently had occasion to enforce this identical statutory definition against the same parent carrier. *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169.

Second, and in any event, a carrier may not excuse discriminatory service on the ground of inadequate facilities. Any lingering doubts as to the soundness of that proposition were, assuredly, dispelled by *Mitchell* v. *United States*, 313 U. S. 80. To the extent that the motive power of the

Junction—consisting of 47 engines at the time of hearing as against 86 engines in 1925 (Ex. 58)—is inadequate to deal with the traffic now flowing through its yards, Sections 1(10) and 1(11) of the Act, without more, require the carrier to remedy the deficiency.

4. It is clear that, since Swift's track is already connected and in operation in the handling of cars containing freight other than livestock, the conditions prescribed in Section 1(9) of the Act have been met, so that it is the plain duty of the Junction to operate that track for all kinds of traffic, livestock included. See *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169; *Cleveland, etc., Ry.* v. *United States*, 275 U. S. 404. And, assuming that the Commission is correct in its conclusion that Swift's proposed livestock shipments of 20 cars a day would in fact "seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally," then, obviously, the cost of whatever additional burden such shipments involve should be equitably distributed over all traffic flowing through the terminal and not be charged in its entirety to a single commodity shipped to a single consignee. To single out livestock consigned to Swift's sidetrack as the exclusive type of freight which will not be accorded the switching service without a high extra charge is unjust and unreasonable in violation of Sections 1(4) and 1(5)(a) of the Act, as well as unjustly discriminatory and unduly prejudicial in violation of Sections 2 and 3(1).

5. The Commission concluded (274 I. C. C. at 572) that, "if complainant's demand for the delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants to render like service to an amount and volume which together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations in carrying livestock to the Union Stock Yard and in making

deliveries of other freight to the industries on the Junction's lines."

But a carrier has no right to deny service now on the ground that in the future its capacities may be overtaxed. Denial of service by the carrier can be justified "if his coach be full"—and only then. Even in that event, under the Act as well as at common law, the carrier must treat all shippers fairly, and may not discriminate against a particular patron. *Pennsylvania R. Co.* v. *Puritan Coal Mining Co.*, 237 U. S. 121.

6. The present case involves an obvious discrimination against shipments of livestock consigned to Swift's sidetrack in favor of shipments of livestock consigned to the Union Stock Yards. It is no answer to say that the packers, including this appellant, were once instrumental in furthering the business of the Yards. They were thereafter required by the command of the antitrust laws to divest themselves of their interest in all stockyards. See *Swift & Co.* v. *United States*, 276 U. S. 311, 328; *United States* v. *Swift & Co.*, 286 U. S. 106, 111. It would be strange indeed if the removal of a restraint on interstate commerce were now to be made the means of justifying a discrimination in interstate commerce.

7. Reversal of the ruling below is not foreclosed by any decision of the Supreme Court. In *Swift & Co.* v. *United States*, 316 U. S. 216, where the yardage fees charged on shipments consigned to Swift at the Union Stock Yards were held to be outside the jurisdiction of the Commission, the present issue was expressly reserved; the Court said (316 U. S. at 227),

> "It does not appear, however, that the existence or adequacy of alternative facilities for delivery at other points is particualrly important in the case, because the shipments involved are consigned to the packers

at the Union Stock Yards by their own choice. It does not appear that they are demanding an increase of other facilities, and the case has not been considered in that light."

Nor is *Atchison, T. & S. F. R. Co.* v. *United States*, 295 U. S. 193, determinative of the present controversy. In that case, as the Court later explained (*Union Stock Yard & T. Co.* v. *United States*, 308 U. S. 213, 219), "the Commission's order directing the discontinuance of appellant's yardage charge to consignees was set aside on the sole ground that the Commission's findings failed to show that the service for which the charge was made was any part of the loading or unloading services, or otherwise a service which the rail carrier was bound to furnish."

8. The ruling below is at variance with a long course of decisions which in the past have construed the Interstate Commerce Act in the light of its purpose of wiping out discriminations of all kinds. The questions presented are substantial, are obviously of public importance, and cannot be disposed of on an examination of the appeal papers. Probable jurisdiction should therefore be noted, and the cause set down for argument.

Respectfully submitted.

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Dated: July 26, 1951.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action File No. 50-C-1017

SWIFT & COMPANY, *Plaintiff*,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court finds:

1. Swift and Company, the plaintiff herein, operates a large meat packing plant in Chicago, Illinois, located adjacent to the Union Stock Yards, and is served by the rails of the Chicago Junction Railway. The defendants are common carriers by railroad engaged in the transportation of livestock to Chicago. The Union Stock Yard and Transit Company of Chicago, The Chicago Livestock Exchange, the Chicago Traders Livestock Exchange, the National Livestock Producers Association, the Chicago Producers Commission Association, and the United States Department of Agriculture were permitted to intervene as intervening defendants.

2. The complaint as amended was filed with the Interstate Commerce Commission on July 29, 1947, and was docketed by said commission as No. 29809, Swift & Company v. Atchison, Topeka and Santa Fe Railway Company, et al.

3. The complaint alleged that the rates, charges and practices in connection with the delivery of direct shipments of livestock, in carloads, transported from points in States other than Illinois, for delivery to plaintiff's plant in Chicago, Illinois, were and are unreasonable, unduly prejudicial to livestock as a commodity, and unduly prejudicial to plaintiff, and preferential to its competitors at points in Illinois, Iowa, Nebraska, Missouri, Kansas, Minnesota, Wisconsin and Indiana.

4. In the complaint the commission was asked to prescribe reasonable rates, charges, rules, regulations, or practices including joint through rates between the line-haul defendants and the Chicago Junction Railway and the Chicago River & Indiana Railroad Company, under which the carrier-defendants would be required to afford delivery of plaintiff's direct carload shipments of livestock upon the industrial sidetrack serving plaintiff's plant in the stock yards area in Chicago, and under which said rates and charges would not exceed the line-haul rates on livestock to Chicago.

5. Answers to the complaint were filed by the carrier defendants; numerous parties representing the Union Stock Yards and producers, buyers and sellers of livestock intervened in opposition to the complaint; the United States Department of Agriculture also intervened as an interested party under its administration of the Packers and Stock Yards Act, 1921, 42 Stat. L. 159. Full hearings were held before an Examiner of the commission, briefs were filed, and the Examiner's proposed report was issued. Exceptions and replies to exceptions were filed, and the proceeding was orally argued before the entire commission. On July 6, 1949, the commission issued its report, 274 I. C. C. 557, a copy of which was annexed to and made a part of the complaint herein as Exhibit B.

6. All of the shipments involved in this case are "direct" carload shipments of livestock consigned to plaintiff for processing at its Chicago plant. "Direct" shipments of livestock are those purchased by a meat packer in producing areas and shipped to his plant for processing and distribution. The term "direct" is used in railroad and stock yard terminology to distinguish this class of livestock from livestock consigned by producers or others to commission men at a public livestock market for sale upon such market.

7. This method of sale by producers direct to meat packers has increased in recent years until, at the time of the hearing before the commission, approximately 64 percent of the hogs, 25 percent of the cattle, 40 percent of the calves, and 39 percent of the sheep and lambs marketed to meat packing plants having federal inspection are shown by

reports of the Department of Agriculture to have been sold direct by producers to such meat packing plants.

8. The shipments of directs here involved to plaintiff's Chicago meat packing plant averaged 6,489 carloads of livestock per annum during the five years immediately preceding the hearing before the commission. These directs are now shipped to certain unloading pens owned by plaintiff, at 2320 South Halsted Street, Chicago, on a sidetrack connected with the rails of the Chicago, Burlington & Quincy Railroad Company. Deliveries of livestock to this sidetrack are made at the flat Chicago rates. From said location, such livestock are moved by plaintiff by motor vehicle through city streets a distance of two and one-half or three miles. Plaintiff had to expend about $50,000 per annum, as of the time of the hearing, for maintenance and operation of motor vehicles used exclusively to transport such livestock from the unloading pens at 2320 South Halsted Street to its plant in the stock yard area.

9. Among other things, the commission found:

> "We find (1) that in the circumstances presented the published switching charges in addition to the line-haul rates will not be unreasonable or otherwise unlawful for the transportation of livestock for delivery on the private sidetracks to be constructed by complainant, which will connect with the Junction, provided that the tracks to be constructed will be adequate for deliveries by the Junction at its ordinary operating convenience and without interruption or interference and (2) that establishment of joint rates for the transportation of this traffic is not necessary or desirable in the public interest."

10. The commission further found:

> "The issue presented is whether or not complainant is entitled to have direct shipments of livestock delivered by the Junction without a charge in addition to the line-haul rates on a private siding at a plant which it proposed to construct in the stock yard area in Chicago."

11. The commission further found:

"In the determination of the issues raised in this proceeding, it is necessary to consider the track layout of the Junction, and the present operations thereover in the handling of so-called dead freight, which term includes perishable and all other freight other than livestock; the method by which livestock has for many years been handled by the line-haul carriers to the Union Stock Yards; the physical operations that would be necessary if the Junction were required to make private-track delivery of livestock, as sought by complainant; and also, in order to avoid undue preference and prejudice, if it were required to make similar deliveries to complainant's competitors.

"All facts relating to the existing custom and practice of making deliveries of livestock and also facts and circumstances leading up to that custom and practice, as well as the effect of the proposed practice on the interests of the carriers, the public, and other shippers, are relevant."

12. The commission further found that the switching charge of the Junction for switching livestock from junctions with connecting lines to plaintiff's plant and other points on the Junction rails, at the time of the hearing, was 4.8 cents per 100 pounds or $28.80 based on the minimum of 60,000 pounds. That carrier, however, has never, except in an emergency handled ordinary livestock in switching service. That traffic is at present, and for many years past, has been handled at Chicago entirely by the line-haul carriers.

13. In its report the commission stated that the Chicago switching district is approximately 40 miles in length and from 7 to 15 miles wide, being served by 35 railroads. The report also states that the two lines referred to as the Junction are exclusively switching lines and together operate 224.35 miles of track within the Chicago switching district, connecting with 27 railroads, that the majority of the 499 industries with private sidings located in the stock yard

district are served solely by the Junction. The two switching lines referred to as the Junction also maintain 11 team tracks and 3 freight stations and together serve 653 industries with 823 sidetracks.

14. The commission further found that the Ashland Avenue Yards of the Junction handled an average of 726,144 loaded and empty cars per annum during the years 1945, 1946, and 1947, that those yards are located in a densely developed industrial part of the city of Chicago, and that there is no land available for the expansion of those yards or the building of additional facilities nearby for the interchange and classification of traffic.

15. The commission further found that approximately 63 percent of the trains of the trunk line carriers going to the Union Stock Yards carry livestock exclusively, that these trains move over eastbound track 1103 directly to the unloading chutes of the Union Stock Yards, that the unloading consumes only a few minutes per car, and that the empties are then moved directly back to the line-haul carriers' home yards over westbound tracks 1102 or 1104. Carriers, such as the Rock Island, which approach the Union Stock Yards from the east, haul their livestock directly to those yards without passing through the Ashland Avenue Yards.

16. The commission further found that since the line-haul carriers must use the same eastbound track into the Union Stock Yards, any delay to a train on that track results in "piling up" trains of other lines seeking ingress to the Union Stock Yards. Frequently as many as four trains must wait to enter this track as a result of its being blocked at the east end. Delays are necessarily experienced also because of "set-outs" made by consolidated trains, consisting of livestock and dead freight and these delays would be multiplied under the delivery practice proposed by plaintiff. In a consolidated train the dead freight is on the head and behind the engine. The cars of livestock are cut off and left standing at the eastern end of the eastbound running track while the line-haul carriers' engine sets dead freight on one of the nine receiving tracks in the south yard. This operation blocks the running track until the engine returns

and hauls livestock into the Union Stock Yards.

17. The commission further found:

> "Under the Federal law, livestock may be confined in cars for not more than 28 hours without unloading for watering and feeding unless the shipper requests in writing that the time be extended to 36 hours. In practically all cases, stock arriving at Chicago has only a limited time within which it must be unloaded from the cars in order to avoid violation of the 28-hour law. The outer yards of the line-haul carriers, from which runs are made to the Union Stock Yards, contain very limited feeding, watering and rest facilities. Many stock runs are made with but one or two cars per train. Under the present practice of handling directly to the unloading chutes in the Union Stock Yards, it is unnecessary to unload the stock for water, feed, and rest at some intermediate location on the Junction. In fact, facilities for that purpose do not exist on that line."

18. The commission further found that the measure of transportation services rendered shipments of live animals is substantially greater than that accorded dead freight. Livestock cannot be switched in the same manner as other freight. In the ordinary and usual course of classifying dead freight, by the Junction, the engine pushes a string of cars along a track leading to the classification tracks. Uncoupled cars are "kicked" or given impetus to roll freely through a switching lead onto the proper classification track. Manifestly, if livestock were so handled it would result in injury to the animals by being thrown against the ends or sides of cars or knocked down. Cars of livestock must necessarily come to rest without rough shocks or jolts.

19. The commission further found:

> "Under the present practice, followed since the inauguration of services to the Union Stock Yards in the interest of expeditious centralized delivery, the yards of the Junction are not burdened with livestock cars either loaded or empty. It clearly appears that any attempt by the Junction to make deliveries of livestock

generally to packers or to transport an amount of livestock substantially greater than complainant's present needs, would result in serious disruption of operations and services and serious delays in the delivery of livestock. * * * There can be longer trains and greater movement of livestock by the line-haul carriers to the stockyards, but the conclusion is warranted that a substantial movement of livestock by the Junction would adversely affect efficient and expeditious terminal operations generally and that operations would be disrupted if much of the large movement of livestock to the stockyards area and the return movement of the empty cars, were performed by the Junction."

20. The commission further found that the present method of delivering livestock in Chicago is reasonable and lawful and the only practical method of delivering livestock in the stock yards area.

21. The commission further found that numerous difficulties would confront carrier-defendants if required to make delivery of livestock at plaintiff's plant, the basic difficulty being that such method of delivery is not adapted to carrier-defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for the performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stock yards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of livestock to the stock yards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject carrier-defendant's operations to interference and delays. This method of terminal operation, including the planning and

building of rail and stock terminal facilities, have resulted, in large part, from the action of the Chicago packers, including plaintiff.

22. The commission further found that although "cars of livestock consigned to plaintiff could be handled in consolidated trains by grouping such cars at the head of the train with the cars of dead freight intended for setout in the south yard, nevertheless, because of difficulties peculiar to livestock traffic, such handling would, it appears, affect adversely the line-haul carriers' operations in carrying livestock to the stockyards."

23. The commission, in its report, stated that the need for such difference in service as regards plaintiff's livestock and the effect thereof would extend to the service in the south yard and beyond, that taking into account periods of peak movements and maximum use, the south yards are used to capacity with no space for construction of additional tracks and that any additional burden would adversely affect all other interests served by the Junction.

24. The commission also found that using the Junction's classification tracks for livestock would result in cars of livestock being blocked in between cars of dead freight and that such cars of livestock would have to be "dug out" for a special run to plaintiff's plant. The commission's report further states:

> "Indeed, it appears that in some instances, immediately upon arrival of a consolidated train including cars of livestock for complainant, the Junction might have to make a special run to deliver the cars at the latter's plant. As above mentioned in practically all cases, livestock arriving at Chicago has only a limited time left before it must be unloaded to avoid violation of the law governing watering and feeding; the Junction has no facilities for watering or feeding anywhere on its lines and such facilities of the kind as are maintained by the line-haul carriers are very limited. While these conditions—all necessitating promptly handling of the traffic—are suited to the practice, long followed, of making deliveries of all shipments of livestock at the stockyards, they are not, it is evident, at all suited

to the plant delivery service sought by complainant in the performance whereof the cars of livestock would have to be switched and otherwise intermingled with cars of dead freight which latter, it appears, may, in the case of perishable freight, require nearly a full day for movement through the yards to points of delivery, and in the case of other dead freight, nearly 32 hours."

25. The commission further found that even if the factor of limited time within which to unload in order to observe the law were rendered unimportant or eliminated, the cars of livestock for delivery at plaintiff's proposed plant would, if handled in regular course and not by special runs, have to be switched, classified, set out, and otherwise handled together with cars of dead freight. Because cars of livestock and any cars of dead freight handled along with them cannot be switched in the usual expeditious manner, there would result numerous interferences and delays. Trains of livestock moving over track 1103 to the stock yards would be delayed; there would be interferences and delays in the south yard and from that yard to and through the base yards. There would be the additional delay involved in controlling the cars in their movement over the descending grade to the proposed plant. The commission's report states:

"Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily would considerably delay and burden defendants' operations. Moreover, although it is shown that complainant's direct shipments of livestock average 18 cars a day, such average necessarily includes days when the shipments exceeded 18 cars. Also it appears that the number of complainant's direct shipments of livestock in proportion to the number bought at the stockyards has been steadily increasing and the testimony of complainant's witnesses affords ground for the belief that that condition will continue."

26. The commission also found that in the event plaintiff's demands were granted, other packers would be entitled to the same delivery service at the same rates if they provided the necessary facilities, and that such other packers would be under great competitive compulsion to provide such facilities. The commission's report states:

> "Nevertheless, it is our best judgment, and we, therefore, so find and conclude, that, if complainant's demand for the delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants to render like delivery service in an amount and volume which together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations in carrying livestock to the Union Stock Yard and in making deliveries of other freight to the industries on the Junction's lines."

27. The commission further found that interference with the movement of livestock to the stock yards is a serious concern not only of the carrier-defendants but also of producers and livestock marketing agencies who desire expeditious movement of livestock and continued functioning of the public market in a manner that is adequate for their needs. The commission's report states:

> "We may, however, disapprove the inauguration of a continuing practice of delivering livestock directly to packers in circumstances where, as we have found would be the case here, such practice would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally. The proposed complete exemption of livestock from transportation by the Junction under any circumstances is not justified. There is no warrant, however, for a conclusion that the establishment of joint rates as desired by complainant is necessary or desirable in the public interest."

28. The commission also found:

"The transportation services, conditions, and circumstances connected with deliveries at the Omaha plant pens are substantially dissimilar from those connected with the delivery here sought. There, the unloading chutes are on the rails of a line-haul carrier, outside the stockyard congested area, and the delivery made by that carrier is nothing more than a simple switch, at carrier's ordinary operating convenience and without interruption or interference from connecting line engines, as all of the switching is under the control of and performed by the Burlington. The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought."

29. The commission also found that the line-haul rates on livestock to Chicago apply only to deliveries served by the line-haul carriers and not to deliveries of livestock by the Junction. The commission's report states:

"The line-haul rates on livestock to Chicago are Commission-prescribed rates. In Chicago Livestock Exch. v. Atchison, T. & S. F. Ry. Co., 219 I.C.C. 531, 545, 546, we said that the 'line-haul carriers operate over the tracks of the Chicago Junction to the Union Stock Yards and make delivery there thereby making these yards their own terminals.' We pointed out that in prescribing the rates on livestock to Chicago, among other markets, there was specifically taken into consideration as an element 'the rendition of terminal service in connection with the transportation of livestock,' and there was included what was considered 'sufficient to cover such terminal services under a normal operation as well as to cover the unloading and loading of livestock at public stockyards,' but we did not there consider what the services would be in con-

nection with deliveries of livestock by the Junction on private industrial tracks. That carrier did not then and does not now perform such services."

30. With reference to its prior reports in Baltimore Butchers Abattoir & Live Stock Co. v. Philadelphia B. & W. R. Co., 20 I.C.C. 124, Swift & Co. v. Baltimore & Ohio R. Co., 266 I.C.C. 55, and Neuhoff Packing Co. v. L. & N.R. Co., 268 I.C.C. 271, the commission found that "Deliveries to private industrial tracks at those points (Baltimore, Maryland, Cleveland, Ohio, and Nashville, Tennessee) did not require substantial modification of terminal operations and interferences with established operations in a manner required at Chicago for such deliveries, and did not involve, as at Chicago, serious disruption of operations. There is no showing of a similarity in any respect of the services required and circumstances affecting services."

31. The commission further found, with respect to the points alleged to be preferred in plaintiff's complaint before the commission:

> "There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred."

32. The commission further found, with respect to a contractual relationship asserted to exist between the Union Stock Yards and the Chicago Junction, that the lease of the Chicago Junction to the Chicago River & Indiana, a subsidiary of the New York Central, in 1922, completely divested the Union Stock Yards of operation and control of the terminal railroad. The commission's report states:

> "The operation of the Chicago Junction is subject not only to the provisions of the Interstate Commerce Act but also to the conditions imposed by the Commission in the Chicago Junction case, supra. Those conditions were particularly intended to insure that the Chicago Junction and the Chicago River & Indiana

out special advantage favoring the New York Centra but the conditions were and are broad enough to in hibit operation of the Chicago Junction to the specia advantage and interest of the Union Stock Yards."

33. The commission further found that "the evidenc affords no basis for a conclusion that the terminal charg of the Junction in addition to the line-haul rates is unrea sonable for deliveries of livestock to the proposed plant, con sidering services and modifications of services that woul be required for the desired deliveries and the effect o terminal operations generally of performing such deliver service to the proposed plant."

34. The commission further found:

"The published switching charge is appropriate fo any switching that may occur of cars of livestock t complainant's proposed plant. It does not appear tha the maintenance of a switching charge for livestoc will have any detrimental effect upon terminal opera tions."

35. On the same date as that on which its report wa issued, the commission issued an order dismissing the com plaint. And, as

Conclusions of Law

1. The commission's order was made after full hearin upon adequate findings supported by substantial evidenc and in accordance with the applicable law.

2. The commission had evidence before it sufficient t sustain its findings.

3. The findings made by the commission are adequate t support its order dismissing the complaint.

4. The order of the commission was within its statutor authority, was not arbitrary or capricious or based upo mistake of law or misapplication of proper statutory stan dards.

5. Plaintiff is not entitled to any of the relief praye

Dated at Chicago, Illinois, this 28th day of May, A.D. 1951.

(S.) F. RYAN DUFFY,
U. S. Circuit Judge.

(S.) PHILIP L. SULLIVAN,
U. S. District Judge.

(S.) M. L. IGOE,
U. S. District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action

File No. 50-C-1017

SWIFT & COMPANY, *Plaintiff*,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants*

ORDER

The above-entitled cause having come on for hearing before this Court on May 15, 1951, and the Court having heard all of the parties hereto and having thereafter and on May 28, 1951 entered its findings of fact and conclusions of law,

ORDERS, ADJUDGES AND DECREES that the complaint herein should be and the same is hereby dismissed.

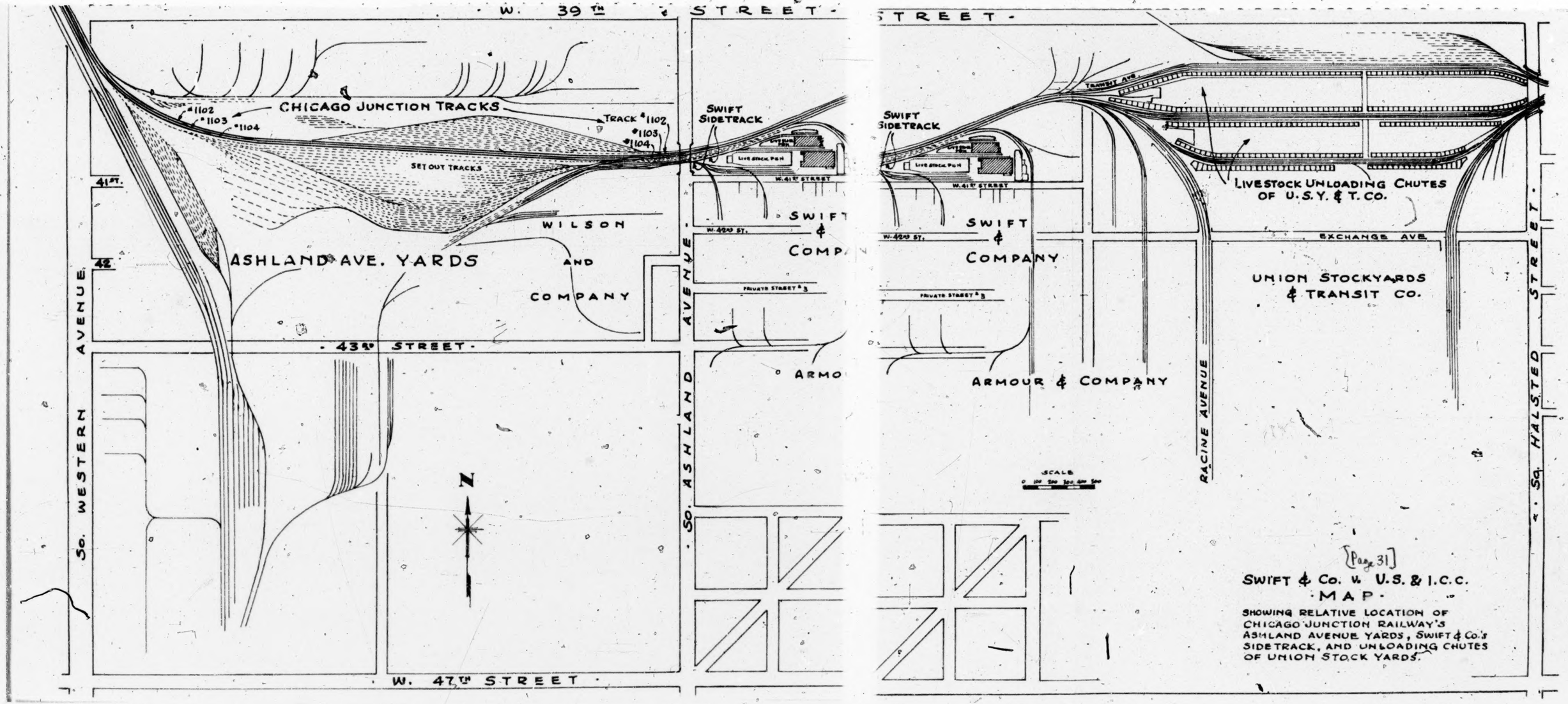
Enter:

F. RYAN DUFFY,
United States Circuit Judge.

PHILIP D. SULLIVAN,
United States District Judge.

M. L. IGOE,
United States District Judge.

Dated at Chicago, Illinois, this 21 day of June, 1951



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SWIFT & Co. vs. U.S. & I.C.C.

·MAP·

SHOWING RELATIVE LOCATION OF CHICAGO JUNCTION RAILWAY'S ASHLAND AVENUE YARDS, SWIFT & Co.'s SIDETRACK, AND UNLOADING CHUTES OF UNION STOCK YARDS.